IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Application NO. 435 of 1999

The Commissioner of Income-tax .... Applicant.

vs.

M/s. Thakkar Vasanji Morarjee .. .. Respondents

A. K. Kotangale for Appellant
None for Respondents.

CORAM: **S. RADHAKRISHNAN**
AND
A. S. AGUIAR JJ.

Date: 13/6/2005

P,C,

1. Heard learned counsel for the Applicant and the Respondents. Perused the order passed by the ITAT dated 8.2.99. The Applicant Revenue is seeking reference on the following question of law:

"Whether on the facts and in the circumstances of the case the ITAT was right in upholding the

order of the learned CIT(A) held that the additions made by invoking provisions of section 41(1) or section 68 of the Act did not amount to concealment of income or furnishing of inaccurate particulars within the meaning of section 271(1)(c) of the Act?"

2. The Tribunal's order also clearly indicates that the Tribunal while concurring the order of CIT(A) observed as under:

"After considering the arguments advanced by the learned D.R. and the facts and circumstances of the cae, we are of the opinion that the additions made by invoking the provisions of section 41(1) or of section 68 cannot, unless and until it is established that the assessee has either concealed or has furnished inaccurate particulars of his income liable to be taxed, by itself be a ground for levy of penalty under section 271*1)(c) and from the records available before us as well as the penalty order there is nothing, except the reliance on the disallowances factum of concealment

or furnishing of inaccurate particulars, the penalty order cannot be sustained. In view of these facts and circumstances , we are of opinion that the CIT (a) was justified in canceling the penalty. The order of the CIT (A) is confirmed."

3. Under the aforesaid facts and circumstances and in view of the above finding of facts, we do not find any substantial question of law involved in this appeal, necessitating a reference. Hence the application stands dismissed.

S. RADHAKRISHNAN J.

A. S. AGUIAR J.